

Exhibit 5

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1 IN THE CIRCUIT COURT
2 FOR BALTIMORE COUNTY, MARYLAND

3 JEFF ALBAN, et al

4 VERSUS

CASE NO.
03-C-06-10932

5 EXXONMOBIL CORPORATION, et al

6
7 / OCTOBER 23, 2008

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10 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

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13 BEFORE THE HONORABLE MAURICE W. BALDWIN, JR., JUDGE

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21 Reported by:

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1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFFS:

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STEPHEN SNYDER, Esquire

ROBERT J. WELTCHEK, Esquire

SCOTT SNYDER, Esquire

MICHAEL SNYDER, Esquire

TOMEKA CHURCH, Esquire

ON BEHALF OF THE DEFENDANT, EXXONMOBIL Corp.:

JAMES SANDERS, Esquire

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THOMAS DUNDON, Esquire

CARLOS BOLLAR, Esquire

C. CAREY DEELEY, Esquire

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P R O C E E D I N G S

October 23rd, 2008

AM SESSION

(Whereupon, the jury returned to the
courtroom and the following ensued:)

THE COURT: Be seated.

MR. STACK: May I proceed, Your Honor?
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8 THE COURT: Almost. For the record, this is
9 Alban v. Exxon, a continuation of 03-C-006-10932.
10 Counsel are present, all fourteen of the jurors are
11 present and accounted for.

12 You may proceed, Mr. Stack.

13 MR. STACK: Thank you, Your Honor.

14 DR. RUDO

15 a witness produced on call of the Plaintiffs, having
16 first been previously sworn, was examined and testified
17 as follows:

18 CONTINUED CROSS EXAMINATION

19 BY MR. STACK:

20 Q. Good morning, Doctor Rudo.

21 A. Good morning, Mr. Stack. Good morning,
22 everybody.

23 THE JURY: Good morning.

24 Q. Doctor Rudo, you and I have been cautioned off
25 the record that we both tend to speak very fast so I

4

1 will try to slow down just a little bit today to
2 accommodate everybody.

3 A. And I will try to match your pace if I can.

4 Q. As part of your work in this case, you went ahead
5 and reviewed the potable test results for the testing
6 and sampling of potable wells of the Plaintiffs, am I
7 correct?

8 A. Yes, you are.

9 Q. You also reviewed test data for monitoring wells,
10 am I correct?

11 A. Yes, sir.

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12 Q. Can you tell the jury how many Plaintiffs
13 actually have a monitoring well on their property?

14 A. None off the top of my head.

15 Q. With respect to monitoring wells, can you tell
16 the jury which of the Plaintiffs have monitoring wells
17 on their property?

18 A. Once again not off the top of my head, no, sir.

19 Q. As part of your work in this case did you conduct
20 any investigation to determine if the Plaintiffs in this
21 case were exposed to contamination in ground water
22 beneath their homes other than through their drinking
23 water well?

24 A. No, sir.

25 Q. As part of your work in this case did you conduct

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1 any investigation to determine if the Plaintiffs were
2 exposed to soil contamination that might be on their
3 property?

4 A. No, sir.

5 Q. With respect to the work that you did in this
6 case, did you do any work to conduct an investigation to
7 determine if the Plaintiffs were exposed to vapors from
8 the contamination of ground water beneath their home
9 entering their home?

10 A. No, sir.

11 Q. At any point in time did you conduct an
12 investigation to determine if the Plaintiffs were
13 exposed to contamination present in any monitoring wells
14 that might be on their property?

15 A. Can you please repeat that?

16 Q. Yes, sir. At any point in time did you conduct

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17 an investigation to determine if any of the Plaintiffs
18 were at any time actually exposed to contamination in
19 monitoring wells which might be on their property?

20 A. No, sir.

21 Q. As part of your work in this case, did you
22 quantify each Plaintiff's exposure to ground water
23 contamination beneath their homes that wasn't being
24 drawn into any of their potable wells?

25 A. No, sir.

6

1 Q. As part of your work in this case, did you
2 attempt to quantify each Plaintiff's exposure to any
3 soil contamination that might be present on their
4 property?

5 A. No, sir.

6 Q. As part of your work in this case, did you ever
7 form any opinion to a reasonable degree of scientific
8 probability regarding how much each Plaintiff was
9 exposed to in the form of ground water contamination
10 beneath their homes that wasn't in their well?

11 A. No, sir.

12 Q. As part of your work in this case, did you ever
13 form an opinion to any reasonable degree of scientific
14 probability regarding how much each Plaintiff may have
15 been exposed to any soil contamination on their
16 property?

17 A. No, sir.

18 Q. As part of your work in this case, did you ever
19 form an opinion to a reasonable degree of scientific
20 certainty regarding how much MTBE or benzene Plaintiffs

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21 may have been exposed to in vapors that may have entered
22 their home from contamination beneath the sub-surface?

23 A. No, sir.

24 Q. Fair to say in the context of your work in this
25 case, you only looked at the presence of contamination

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1 in Plaintiffs' drinking water wells?

2 A. Yes, sir.

3 Q. At any point in time did you attempt to quantify
4 and form an opinion regarding the amount of exposure the
5 Plaintiffs may have had to MTBE or benzene from any
6 source other than your drinking water well?

7 A. No, sir.

8 Q. At any point in time did you ever attempt to
9 quantify what the dose was for each Plaintiff for
10 benzene or MTBE from any source other than their
11 drinking water?

12 A. No, sir.

13 Q. As part of your work in this case you and I
14 reviewed your deposition. The Kleinfelder test results
15 confirm that?

16 A. I have to refresh my memory on that.

17 Q. That would be deposition -- Exhibit 16, the long
18 table with the redactions in it?

19 A. We would have to go look at it.

20 Q. In preparation for trial did you look at the
21 Joint Exhibit J, the one which has all of the test
22 results for the Plaintiffs in it?

23 A. You would have to show it to me. I have looked
24 at a lot of testing data. So whether it is a total
25 summary data or it's, you know, partial data, I'd have

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1 to look at it.

2 Q. With respect to this case, before you got on the
3 stand did you look at the chart that showed the maximum
4 concentrations of contamination in the Plaintiffs'
5 wells?

6 A. Chart in that was maybe presented here.

7 Q. Yes, sir.

8 A. No, sir, I haven't seen that.

9 Q. Did counsel provide you with any of the Joint
10 Exhibits that were provided to the jurors showing for
11 each one of the Plaintiffs what their contamination was
12 in their well?

13 A. I'm not aware of what they would have shown to
14 the jurors in terms of what would have been shown to me.

15 MR. WELTCHEK: On direct examination,
16 Plaintiffs' Exhibits.

17 BY MR. STACK:

18 Q. Mr. Weltschek has clarified one point. You have
19 seen the chart from the 66 people, am I correct?

20 A. Yes. I have seen the chart for the sampling
21 results for residents.

22 In terms of what you have used for exhibits here,
23 if they're in another, may have, I may not have seen
24 those.

25 Q. Fair enough. Would you agree with me that there

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1 are 24 plaintiffs' wells in this case that the highest
2 detection ever in their well was non detect?

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3 A. I have to go look at the chart for that.

4 MR. WELTCHEK: I would agree that, yes,
5 that's correct.

6 A. Okay.

7 Q. Would you also agree that there are an additional
8 30 wells that the maximum value in the well was a J
9 value at 0.5 parts per billion?

10 A. Once again I'd have to look at the -- count it
11 up. I'd have to look at.

12 MR. WELTCHEK: Sounds right.

13 A. That sounded about right.

14 Q. Is it your understanding, sir, that in this case
15 there are a total of 54 wells for which the maximum
16 value of MTBE ever detected in the well was 0.5 or
17 below?

18 A. Once again I'd have to look at the table and
19 count it up.

20 MR. STACK: Your Honor, if I could take one
21 minute to see if I can grab the tables and provide them
22 to the witness?

23 THE COURT: Very well, sir.

24 MR. STACK: I apologize.

25 THE WITNESS: They're in the box.

10

1 MR. STACK: They're right here.

2 MR. WELTCHEK: There's a blow-up right here
3 if you need it.

4 MR. STACK: I'd apologize, Your Honor, but
5 -- I can't find the chart. Sorry, no problem. Give
6 this to the witness.

7 MR. STACK: What I am looking for is JT2 and
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8 JT3. Here we go. I got one.

9 BY MR. STACK:

10 Q. I'll provide these to you.

11 A. Thank you.

12 Q. The record should reflect I've provided a copy of
13 what was marked as Joint Exhibit Number 2 to the
14 witness.

15 Have you prior to appearing here in Court to
16 testify reviewed what has been marked at this trial as
17 Joint Exhibit Number 2?

18 A. Yes, sir.

19 Q. And in looking at that, does it refresh your
20 recollection that there were a total of 54 wells for
21 which the maximum value ever detected was 0.5 parts per
22 billion or below?

23 A. Okay, yes.

24 Q. And can we have 52 please, Mr. Ramsmeier? At any
25 point in time did you actually as part of your work in

11

1 this case undertake to map out which ones of the
2 Plaintiffs had nondetect or a maximum detection of less
3 than 0.5 parts per billion?

4 A. I have seen it mapped out. I haven't done it
5 myself but it's been done already.

6 Q. So we are clear in this case, it is your opinion
7 that with respect to these residents of these 54 homes
8 served by these 54 wells that these individuals should
9 have medical monitoring, am I correct?

10 A. When you are talking about the people that are
11 .5, now please explain that again, what you were saying

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12 there --

13 Q. Yes, sir.

14 A. -- in terms of that.

15 Q. In this exhibit, which is KR52 for the record, is
16 a map depicting the 54 homes for which the highest MTBE
17 detection ever was either nondetect or detect for less
18 than 0.5 parts per billion.

19 A. So are you saying that this includes values,
20 homes that were -- actually had less detected or
21 estimated, right?

22 Q. That's correct.

23 A. Okay.

24 Q. And estimate is the key thing, too, Doctor. It's
25 a J value for all these homes?

12

1 A. Right. And I think it needs to be understood
2 that the detection limit is a value that -- it's a
3 target that they use in terms of, you know, what they
4 want to try to detect it at, and it still is valid in
5 terms of if you detect it under that detection limit,
6 it's still considered in our world in terms of an
7 evaluating sample results if there is value that, an
8 estimated value, it's considered a detect and it is
9 considered contamination. So I just want to --

10 Q. I'm not going to quibble with you about that at
11 all. These were all detections with J value
12 estimations.

13 But I want to make clear for the jury that it is
14 your opinion that individuals residing in homes with
15 wells, and there are 54 of them, that those individuals
16 who had nondetect or a detection under 0.5 parts per

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17 billion, every one of those people should get medical
18 monitoring?

19 A. Now, and there is a reason for it if you -- I
20 will explain that if --

21 Q. If -- you can explain it. If you just answer the
22 question.

23 A. Yes.

24 Q. It is yes, it is your opinion?

25 A. Yes.

13

1 Q. Why do you think every resident living in a home
2 where there is nondetect or at level of 0.5 or below
3 needs medical monitoring?

4 A. All right, the reason is that, number one, there
5 is no certainty that the nondetects that the people had
6 didn't mean that they had exposure either before that or
7 either they may have had it after that, number one.

8 Number two, there was a window of, I don't know
9 about a month, a month and a half where contamination in
10 this residence and in this residential area was not
11 detected. It was not known.

12 You have a plume that was moving very quickly
13 contaminating homes and it is indeed possible that,
14 number one, people were exposed during that time that
15 later on may not have had it in their well.

16 The nondetects may have been levels that were
17 detected in the past and that since then they may have
18 had contamination in their well, and there may have been
19 exposure, in other words, either before or after the
20 nondetect period, including the period I believe from

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21 January into February of 2006 where the contamination
22 occurred without anyone being aware that it had
23 occurred.

24 And the reason that you recommend medical
25 monitoring is that we have been talking about risks in

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1 this room. We have been talking about it in terms of,
2 and Mr. Stacks has been trying to present it as a
3 theoretical risk or as a valued risk, when in terms of
4 the reality of the situation, in terms of public health
5 and what it can do to people because of the nature of
6 the chemical, it is a mutagenic carcinogen and there is
7 no safe level. The safe level is zero. That's been
8 established by the EPA in terms of their maximum
9 contaminant limit goes.

10 It's, it's a public health approach that is used
11 and because of that, and because we do not know if the
12 people that have contamination, how long they have had
13 it, we do not know the people that have no detects now
14 may have had it in the past or in the future.

15 We also do not know the people that have the
16 values that are being -- the J values which are existing
17 levels of the chemical in the well, these all pose a
18 risk, and part of the, part of the reason for the
19 medical monitoring and the importance of the medical
20 monitoring is that this is a neighborhood that has
21 been -- has had their water put at risk for them by
22 Exxon.

23 They have contaminated their wells. From what I
24 understand, they have actually admitted to doing that,
25 and having admitted to doing that, and having put these

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1 people at risk in terms of carcinogenic chemicals in the
2 water that have been found to cause cancer in animals
3 and in the field, indeed, these chemicals have been
4 found to cause cancer in people in cases that have been
5 found.

6 So when you look at that and you look at the
7 risk, the idea from a public health standpoint, for me
8 as a toxicologist whose job it is to try to protect
9 public health, is that you want to make sure that these
10 people are not put at any further risk or if they are,
11 down the road, God forbid, something should happen to
12 them, you would want them to be in a situation where
13 they are having their physicians look at them, they are
14 having medical monitoring, they're being looked after
15 medically down the road in the future because a lot of
16 times we talk about something that may take five to 30,
17 35 years to occur.

18 So you want to make sure that you are looking
19 after their health, that you are taking responsibility
20 in this case, which Exxon has taken responsibility for
21 contaminating their water. They need to take
22 responsibility at this point in time for making sure
23 that these people are not going to get any kind of
24 adverse health affect down the road from this
25 contamination which has put them at an increased risk.

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1 So medical monitoring in our world is an
2 appropriate approach to make sure that you're protecting

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3 people that have had this kind of contamination without
4 their knowledge and put at risk without their knowledge.

5 So that's my answer, sir.

6 Q. Do you have any test results that you can show
7 the jury as a result of testing performed to indicate
8 that there was ever any detection of MTBE or benzene in
9 any of the homes that are listed as nondetects?

10 A. I'd have to go back and look at the full data for
11 all -- from all times.

12 Q. As part of your work in this case, did you ever
13 request that sampling be conducted at these 54 homes to
14 confirm that during times that Exxon was not sampling at
15 the direction of the MDE, there actually was
16 contamination there?

17 A. I have recommended a general sampling protocol
18 for the whole neighborhood, yes.

19 Q. And during the period of time that you have been
20 involved in this case, has any one on behalf of the
21 Plaintiffs followed your protocol for these 54 homes?

22 A. I'm not sure --

23 Q. Anyone show you bi-monthly, any one show you
24 bi-monthly testing results for these 54 homes showing
25 detects?

17

1 A. I have seen breakdowns of all the detailed
2 monthly testing that has been done for all the
3 residences.

4 I have seen the actual chart in terms of -- I'd
5 have to go back and look at that to see if some of the
6 nondetects now are the ones you have here have been
7 consistently that or not.

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8 But I was aware when I looked at the data
9 originally that a lot of -- there was fluctuations in
10 levels, and that's what you expect, that some people who
11 had nondetects at one point in time had detects at other
12 points in time and --

13 Q. But as to these 54 people, has anyone ever shown
14 you testing performed by anyone other than Kleinfelder
15 or the State of Maryland that actually shows that these
16 54 wells had a detection of MTBE greater than 0.5 or
17 greater than that nondetect?

18 A. Once again, I'd have to look at the monthly
19 chart.

20 Q. You haven't done that as part of your work in
21 this case?

22 A. I have, I have looked at it for all the, the
23 Plaintiffs in the case. I'd have to go back and see if
24 it answers your question as you're stating it.

25 Q. With respect to these individuals, did you ever

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1 calculate periods of time during which there were
2 intervals in the testing in which there could have been
3 contamination in their well and then quantify the risk
4 for that exposure?

5 A. I haven't in terms of doing quantitative reports
6 for the Plaintiffs, and looking at exposure intervals,
7 I'm aware of, you know, the fact that there were gaps in
8 testing in terms of calculations.

9 Q. Did you actually look at those intervals and for
10 each of these 54 homes determine what the period of time
11 was and quantify the risk assuming there was some